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JUL 15 2004

OFFICE OF PETITIONS

In re Application of :
Michael Fleisher, Sachin Ahuja, :
Adityo Prakash and Edward Ratner :
Application No. 10/729,348 :
Filing Date: December 5, 2003 :
Attorney Docket No. 10006.001810 :
Title: METHOD AND APPARATUS FOR :
MEASURING IMAGE COMPLEXITY :

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the "PETITION UNDER 37 CFR 1.47(a) FOR FILING WHEN AN INVENTOR REFUSES TO SIGN OR CANNOT BE REACHED," filed May 10, 2004 (certificate of mailing May 6, 2004).

The petition is **DISMISSED**.

Rule 47 applicants are given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 C.F.R. § 1.136(a).

The above-identified application was filed on December 5, 2003, with an unexecuted declaration and missing the basic statutory filing fee. Accordingly, on March 8, 2004, the Office mailed a "Notice to File Missing Parts of Application," requiring an executed oath or declaration, the filing fee and the surcharge under § 1.16(e) for late filing. This Notice set a two-month period for reply, with extensions of time obtainable under § 1.136(a).

Applicants replied with the instant petition under § 1.47; payment of the petition fee, the filing fee and the late surcharge; and two declarations, executed in combination, by joint inventors Fleisher and Ratner on behalf of themselves and on behalf of non-signing inventors Ahuja and Prakash. Rule 47 applicants assert that status under § 1.47 is proper because of the unavailability of joint inventors Ahuja and Prakash. In support thereof, applicants submitted a statement of pertinent facts of James Okamoto.

A grantable petition under 37 CFR § 1.47(a) requires: (1) an acceptable oath or declaration in compliance with 37 C.F.R. § 1.63 and 1.64 or 1.175; (2) proof that the non-signing inventor cannot be found or reached after diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. The petition included payment of the petition fee; a declaration in compliance with § 1.47; and statements of the last known address of each of the non-signing inventors. However, the petition must be dismissed because requirement (1) has not been met.

Petitioner has not shown that the non-signing inventors, Ahuja and Prakash, cannot be found or reached after diligent effort to be presented with all of the application papers. The petition does not include adequate evidence to support a conclusion that diligent efforts have been made to find or reach the non-signing inventors to have him join in this application. Having been unsuccessful in contacting them by mail, there is no indication that Rule 47 applicants attempted to determine their forwarding addresses, and to send the application papers to those addresses for consideration. See MPEP 409.03(d). If attempts to obtain a forwarding address or to locate the non-signing inventor by other means such as through E-mail, a new telephone number, or the Internet continue to fail, then applicants will have provided the necessary proof required under 37 CFR 1.47 that the inventor cannot be reached or found after diligent effort. Details of the efforts to locate the non-signing inventors should be set forth in an affidavit or declaration of facts by a person with first hand knowledge of the details. Applicants should also submit documentary evidence such as the results of an E-mail or Internet searches.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 ATTN: NANCY JOHNSON
 SENIOR PETITIONS ATTORNEY

By hand: Effective June 5, 2004, patent correspondence delivered by hand or delivery services, other than the USPS, to the Customer Window must be addressed as follows:

U.S. Patent and Trademark Office
220 20th Street S.
Customer Window, Mail Stop Petition
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

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Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0309.

A handwritten signature in cursive script, appearing to read "Nancy Johnson". The signature is fluid and extends to the right.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions